UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UTHAIWAN WONG-OPASI, Complainant,	)	8 U.S.C. § 1324b Proceeding
v.	)	OCAHO Case No. 99B00052
GOVERNOR DON SUNDQUIST, Respondent.	)	Judge Robert L. Barton, Jr.

FINAL ORDER DISMISSING COMPLAINT

(*April 25, 2000*)

I. INTRODUCTION

On February 23, 2000, Tennessee Governor Don Sundquist (Governor Sundquist) submitted a Motion to Dismiss the complaint, which was served upon Uthaiwan Wong-opasi (Complainant). Because of various procedural defects, the Motion was not accepted for filing by this court until March 29, 2000. In an Order entered on March 29, 2000, however, I accepted Governor Sundquist's Motion to Dismiss for filing and directed Complainant to file her response to the Motion by April 20, 2000. As of April 25, 2000, Complainant has not filed a response to the Motion, and has not requested an extension of time in which to file.

Governor Sundquist bases his Motion to Dismiss upon six discrete theories, each of which shall be discussed below. Most important, for purposes of this Order, is Governor Sundquist's allegation that the Eleventh Amendment to the United States Constitution renders him immune from suit with respect to his official conduct, thus depriving this court of subject-matter jurisdiction.

Under applicable Sixth Circuit standards, a Complainant faced with a "factual" motion to dismiss for lack of subject-matter jurisdiction bears the burden of proving the existence of the court's jurisdiction. By failing to file a response to Governor Sundquist's Motion to Dismiss, Complainant has not satisfied her burden of proof in this regard. Consequently, Governor Sundquist's unopposed Motion to Dismiss is GRANTED, and the Complaint is dismissed.

Aside from the lack of subject-matter jurisdiction, I also would dismiss the Complaint on the ground that Complainant's failure to comply with my March 29, 2000, Order directing her to respond to Governor Sundquist's Motion to Dismiss constitutes an abandonment of the Complaint under 28 C.F.R. § 68.37(b)(1) (1999).

II. BACKGROUND AND PROCEDURAL HISTORY

On July 21, 1999, Complainant filed a pro se Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that the State of Tennessee (State) and Governor Sundquist had (1) fired her because of her national origin and her citizenship status, and (2) retaliated against her because she had filed or planned to file a charge with the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) or a complaint with OCAHO. See Compl. at 4, 5. On November 4, 1999, counsel for the State and Governor Sundquist filed a Motion to Dismiss on behalf of the State, but not on behalf of Governor Sundquist. In addition to the Motion to Dismiss, counsel also filed a Motion to Stay, arguing that discovery and motion practice should be suspended in this proceeding pending my adjudication of the November 4, 1999, Motion to Dismiss. On December 7, 1999, I granted the Motion to Stay and instructed the parties that "no further pleadings will be accepted for filing, unless a party is specifically directed or permitted to do so in advance by written order. If a party wishes to conduct discovery or to file a pleading, the party shall file a motion requesting that the stay be limited in part to permit the requested relief."

On January 11, 2000, I entered an Order Granting the State's Motion to Dismiss on grounds of Eleventh Amendment immunity. However, in that Order I indicated that the Complaint had been dismissed only with respect to the State *qua* state, and not with respect to Governor Sundquist. As I noted in my Order of January 11, the complaint survived against Governor Sundquist because the State had presented no arguments in its Motion to Dismiss regarding Governor Sundquist's possible liability under the Ex parte Young exception to Eleventh Amendment immunity.

On February 24, 2000, Governor Sundquist submitted a Motion to Dismiss. However, because this Motion to Dismiss was not accompanied by a motion requesting that the stay be limited in part to permit the requested relief, I determined that the submission violated my Stay Order of December 7, 1999. Consequently, on February 24, 2000, I entered an Order reaffirming my stay order of December 7, 1999, and informing Governor Sundquist that his submission would not be accepted for filing and would not be considered by the court until I had granted a motion requesting limitation of the stay.

On March 9, 2000, Governor Sundquist filed a Motion Requesting Limitation of the Stay. Because this Motion was served on Complainant by ordinary mail, she had fifteen days from the date of service–i.e., until March 23, 2000–in which to file her response with the court. See 28 C.F.R. §§ 68.11(b), 68.8(c)(2) (1999). Complainant filed no response to the Motion; therefore, on March 29, 2000, I granted Governor Sundquist's Motion to Limit Stay, clearing the way for consideration of his Motion to Dismiss.

In the Order dated March 29, 2000, I directed Complainant to file a response, by April 20, 2000, to Governor Sundquist's Motion to Dismiss; moreover, I expressly warned Complainant–who had failed to reply to several prior Orders–that a failure to respond could result in dismissal of the Complaint on grounds of abandonment under 28 C.F.R. § 68.37(b)(1) (1999). April 20, 2000, has now passed, and Complainant has neither filed a response to Governor Sundquist's Motion to Dismiss nor requested an extension of time in which to file.

The Motion to Dismiss sets forth six (6) discrete grounds for dismissal. First and foremost, Governor Sundquist argues that OCAHO lacks subject-matter jurisdiction over this proceeding by virtue of his Eleventh Amendment immunity from suit in federal court. See R's Mot. to Dismiss at 4-12. Most importantly, Governor Sundquist argues that he is not amenable to suit, as a state official, for prospective relief under the Ex parte Young exception to Eleventh Amendment immunity. Id. at 8-12. The five other grounds for dismissal raised by Governor Sundquist's Motion are: (1) that OCAHO lacks subject-matter jurisdiction over Complainant's claims of citizenship-status discrimination because Complainant has failed to prove that she is a "protected individual" as that phrase is defined under 8 U.S.C. § 1324b(a)(3)(B), id. at 12-13; (2) that OCAHO lacks subject-matter jurisdiction over Complainant's claims of national origin discrimination and retaliation because Complainant had already filed charges regarding those claims with the Equal Employment Opportunity Commission (EEOC) at the time she filed her OCAHO Complaint, in violation of 8 U.S.C. § 1324b(b)(2), id. at 13-17; (3) that OCAHO lacks subject-matter jurisdiction because Complainant failed to attach a signed OSC Charge to her Complaint in violation of 8 U.S.C. § 1324b(b)(1) and, ostensibly, 28 C.F.R. § 68.7(c), id. at 17-18; (4) that OCAHO lacks subject-matter jurisdiction because Complainant's OSC Charge against Governor Sundquist was untimely filed, id. at 18-19; and (5) that Complainant has failed to state a claim upon which relief can be granted because her Complaint does not state a prima facie case either of discrimination or of retaliation. Id. at 19-22.

III. STANDARDS GOVERNING MOTIONS TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION

Governor Sundquist has moved for dismissal based on both OCAHO's alleged lack of subject-matter jurisdiction and the alleged failure of the Complainant to state a claim upon which relief can be granted. I am bound to consider the motions regarding subject-matter jurisdiction first, since Governor Sundquist's motion to dismiss for failure to state a claim becomes moot if this court lacks subject-matter jurisdiction. See Bell v. Hood, 327 U.S. 678, 682 (1946); see also CHARLES ALAN WRIGHT & ARTHUR R. MILLER, 5A FEDERAL PRACTICE AND PROCEDURE § 1350, at 209-210 (1990). The standards governing motions to dismiss for lack of subject-matter jurisdiction are distinct from those governing motions to dismiss for failure to state a claim, and the two should not be conflated. See WRIGHT & MILLER, § 1350, at 89 (2d ed. Supp. 1998).

The OCAHO Rules of Practice and Procedure, 28 C.F.R. § 68, contain no specific provision authorizing motions to dismiss for lack of subject-matter jurisdiction. The Rules, however, provide that the Federal Rules of Civil Procedure (FED. R. CIV. P.) "may be used as a general guideline in any situation not provided for or controlled by [OCAHO] rules, the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation." 28 C.F.R. § 68.1 (1999). It is well established that FED. R. CIV. P. 12(h)(3), which compels dismissal of actions "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction over the subject matter," may be "used as a general guideline" when an OCAHO Administrative Law Judge (ALJ) is confronted with a motion challenging OCAHO's subject-matter jurisdiction. See, e.g., Hammoudah v. Rush-Presbyterian-St. Luke's Med. Ctr., 8 OCAHO 1015, at 3 (1998), 1998 WL 1085948, at *2

(O.C.A.H.O.); Artioukhine v. Kurani, Inc. d/b/a Pizza Hut, 1998 WL 356926, *3-4 (O.C.A.H.O.); Boyd v. Sherling, 6 OCAHO 1113, 1119 (Ref. No. 916) (1997), 1997 WL 176910, *5 (O.C.A.H.O.); Caspi v. Trigild Corp., 6 OCAHO 957, 960 (Ref. No. 907) (1997), 1997 WL 131354, * 2-3 (O.C.A.H.O.).[1] Because the Complainant's alleged cause of action against Governor Sundquist arose in the State of Tennessee, and because any judicial review will lie with the U.S. Court of Appeals for the Sixth Circuit (Sixth Circuit), I shall hereafter follow Sixth Circuit precedent where applicable.

The Sixth Circuit applies different standards of review to "facial" motions to dismiss for lack of subject-matter jurisdiction–i.e., attacks based on the plaintiff's failure to invoke the court's jurisdiction in the complaint, but not challenging the court's legitimate authority to adjudicate the dispute–and "factual" or "speaking" motions to dismiss for lack of subject-matter jurisdiction–i.e., attacks alleging that the court lacks subject-matter jurisdiction in fact, despite the formal sufficiency of the allegations made in the complaint. See Ohio Nat'l Life Ins. Co. v. United States, 922 F.2d 320, 325 (6th Cir.1990); see also WRIGHT & MILLER, § 1350, at 211-12 (1990). In essence, a "facial" motion to dismiss alleges a mere defect in pleading that can be cured if the non-moving party makes appropriate amendments to the complaint. A "factual" motion to dismiss, by contrast, alleges an incurable jurisdictional defect that deprives the court of any authority to adjudicate the dispute.

Here, Governor Sundquist moves to dismiss for lack of subject-matter jurisdiction on both facial and factual grounds. Governor Sundquist's invocation of the Eleventh Amendment challenges this court's subject-matter jurisdiction in fact, despite the formal sufficiency of the allegations made in the Complaint, and therefore constitutes a "factual" challenge to OCAHO's subject-matter jurisdiction. Moreover, Governor Sundquist's assertion that OCAHO is foreclosed from adjudicating Complainant's national origin discrimination claims because EEOC has already asserted jurisdiction over those claims is likewise a "factual" challenge to OCAHO's subject-matter jurisdiction. Consequently, with respect to these two grounds for dismissal, Governor Sundquist's Motion must be evaluated according to Sixth Circuit standards governing "factual" or "speaking" motions. By contrast, Governor Sundquist's assertions regarding Complainant's failures (1) to prove

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[1] Citations to OCAHO precedents in bound Volumes I and II, Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Employment Practice Laws of the United States, reflect consecutive decision and order reprints within those bound volumes. Citations to OCAHO precedents in bound Volumes III-VII, Administrative Decisions Under Employer Sanctions, Unfair Immigration-Related Employment Practices and Civil Penalty Document Fraud Laws of the United States, reflect consecutive decision and order reprints within those bound volumes. For OCAHO precedents appearing in bound volumes, pinpoint citations refer to specific pages in those volumes; however, pinpoint citations to OCAHO precedents in as yet unbound Volumes are to pages within the original issuances. Decisions that appear in Volumes I-VII will be cited to the page in that bound publication on which they first appear; the OCAHO reference number, by which all as yet unbound decisions are cited, also will be noted parenthetically for Volume I-VII decisions. Unbound decisions that have only been published on Westlaw shall be identified by Westlaw reference number.

that she is a "protected individual," (2) to attach a signed OSC Charge to her OCAHO Complaint, and (3) to timely file an OSC Charge, are "facial" attacks alleging curable defects in pleading. These two grounds for dismissal must be evaluated according to Sixth Circuit standards governing "facial" motions to dismiss. The following paragraphs elucidate the content of these twin standards.

A. SIXTH CIRCUIT STANDARDS GOVERNING "FACTUAL" OR "SPEAKING" MOTIONS TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION

Under Sixth Circuit law, when a trial court reviews a complaint under a factual attack with respect to the court's subject-matter jurisdiction, the court "is not to presume that the factual allegations asserted in the complaint are true." Kroll v. United States, 58 F.3d 1087, 1090 (6th Cir. 1995); Ohio Nat'l Life, 922 F.2d at 325. Rather, "the court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." United States v. Ritchie, 15 F.3d 592, 598 (6th Cir.), cert. denied, 513 U.S. 868 (1994); Ohio Nat'l Life, 922 F.2d at 325 (indicating that "a trial court has wide discretion to allow affidavits, documents and even a limited evidentiary hearing to resolve disputed jurisdictional facts."). Moreover, the Complainant bears the burden of proving jurisdiction in order to survive a factual motion to dismiss. Thomson v. Gaskill, 315 U.S. 442, 445 (1942); GTE North, Inc. v. Strand, --- F.3d ----, 2000 WL 424028, *4 (6th Cir. 2000); Jones v. City of Lakeland, 175 F.3d 410, 413 (6th Cir. 1999); Moir v. Greater Cleveland Regional Transit Auth., 895 F.2d 266, 269 (6th Cir. 1990); Rogers v. Stratton Industries, Inc., 798 F.2d 913, 915 (6th Cir.1986).

B. SIXTH CIRCUIT STANDARDS GOVERNING "FACIAL" MOTIONS TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION

Under Sixth Circuit law, when a trial court reviews a complaint under a facial attack with respect to the court's subject-matter jurisdiction, "a trial court takes the allegations in the complaint as true, which is a similar safeguard employed under 12(b)(6) motions to dismiss." Ohio Nat'l Life, 922 F.2d at 325. If, under this standard of review, the complainant fails to satisfy his or her initial burden of proof with respect to the court's jurisdiction, the complaint must be dismissed unless the complainant cures the defect in a timely manner.

IV. ANALYSIS

A. THE ELEVENTH AMENDMENT

As mentioned previously, Governor Sundquist's first argument in his Motion to Dismiss is that OCAHO lacks subject-matter jurisdiction to adjudicate this action because he, as Governor of the sovereign State of Tennessee, is immune from suit in federal court under the Eleventh Amendment to the United States Constitution. This is a "factual" challenge to OCAHO's subject-matter jurisdiction, in that it alleges that OCAHO lacks jurisdiction in fact to adjudicate the present dispute, regardless of the sufficiency of the jurisdictional allegations made in the complaint. Consequently, according to Sixth Circuit precedents governing "factual" challenges of this sort, I

need not presume the truthfulness of Complainant's allegations; rather, I am "free to weigh the evidence and satisfy [my]self as to the existence of [my] power to hear the case," keeping in mind that the Complainant bears the burden of proof with respect to jurisdiction. Ohio Nat'l Life, 922 F.2d at 325.

On January 11, 2000, I entered an Order dismissing the complaint, as against the State of Tennessee, on the ground that the State was immune from suit in federal court under the Eleventh Amendment to the U.S. Constitution. See Wong-opasi v. State of Tennessee, et al., 8 OCAHO 1042, at 11 (January 11, 2000). In that Order, I set forth the basic Eleventh Amendment doctrine and pointed out that the federal courts had recognized only two narrow exceptions to Eleventh Amendment immunity for states and state entities–the "congressional abrogation" exception and the "waiver" exception. Id. at 8-11. Moreover, I concluded that neither exception applied to the factual circumstances of the instant case. Id. at 11. I now take the opportunity to reiterate my prior conclusion that, in cases arising under 8 U.S.C. § 1324b, the Eleventh Amendment deprives OCAHO of jurisdiction to adjudicate actions against states and state entities.

As I also noted in my January 11, 2000, Order, however, a state officer such as Governor Sundquist, sued in his official capacity for violation of federal law, is not necessarily entitled to protection under the Eleventh Amendment's grant of immunity. See Ex parte Young, 209 U.S. 123, 158-59 (1908); Green v. Mansour, 474 U.S. 64, 68 (1985). This Ex parte Young doctrine, "which ensures that state officials do not employ the Eleventh Amendment as a means of avoiding compliance with federal law," constitutes a decidedly narrow exception to the general rule of Eleventh Amendment immunity. See Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc., 506 U.S. 139, 146 (1993) (citing Cory v. White, 457 U.S. 85, 90-91 (1982)). To illustrate the narrowness of the Ex parte Young exception, Puerto Rico Aqueduct explains that "[i]t applies only to prospective relief, does not permit judgments against state officers declaring that they violated federal law in the past, and has no application in suits against the States and their agencies, which are barred regardless of the relief sought." 506 U.S. at 146. Moreover, the Ex parte Young Court itself took care to point out that an alleged violation of federal law must in fact be traceable to the conduct of the named officer in order to qualify for the exception: "[i]n making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party." 209 U.S. at 157 (internal citations omitted).

In 1997, the Supreme Court further narrowed the applicability of the Ex parte Young exception in two significant ways. First, the Court held that suits against individual state officers, seeking prospective equitable relief from continuing violations of federal law, are prohibited by the Eleventh Amendment, despite the Ex parte Young exception, if the requested relief intrudes upon the "special sovereignty interests" of the State. See Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 276-77 (1997) (holding that petitioner's declaratory judgment action against individual officials of the State of Idaho was barred by the Eleventh Amendment because it was the "functional equivalent" of a quiet title action against the State, thus intruding upon Idaho's sovereign role in

regulating public access to waterways); see also MacDonald v. Village of Northport, Michigan, 164 F.3d 964, 972 (6th Cir. 1999) (holding that Coeur d'Alene Tribe barred an otherwise actionable Ex parte Young suit against individual officers of the State of Michigan where the plaintiffs sought a declaration invalidating a right-of-way that provided public access to Lake Michigan).

Second, in concluding that the Ex parte Young rule was of greatest utility in cases "where there is no state forum available to vindicate federal interests," id. at 270, the Coeur d'Alene Tribe Court suggested that the availability of such state remedies may render the Ex parte Young exception inapplicable:

> What is really at stake where a state forum is available is the desire of the litigant to choose a particular forum versus the desire of the State to have the dispute resolved in its own courts. The Eleventh Amendment's background principles of federalism and comity need not be ignored in resolving these conflicting preferences. The Young exception may not be applicable if the suit would 'upset the balance of federal and state interests that it embodies.'

Id. at 277 (citations omitted). Thus, if a federally-protected interest can be adequately vindicated under state law, deference to principles of federalism may render the Ex parte Young exception unavailable to bring the Complainant's case within the jurisdiction of a federal court.

In my January 11, 2000, Order, I declined to dismiss the complaint, as against Governor Sundquist, because neither party appeared to have considered the possible applicability of Ex parte Young. 8 OCAHO 1042, at 11-13. Governor Sundquist's Motion to Dismiss, however, which I accepted for filing on March 29, 2000, argues directly that the Ex parte Young exception does not apply to the facts of the instant case. See R.'s Mot. to Dismiss, at 8-11. Consequently, Governor Sundquist avers that OCAHO lacks subject-matter jurisdiction because, as Governor, he is shielded under the Eleventh Amendment immunity of the State of Tennessee.

Because Governor Sundquist's Motion to Dismiss alleges that OCAHO lacks subject-matter jurisdiction in fact, Complainant bears the burden of proving that this court possesses jurisdiction. GTE North, Inc. v. Strand, --- F.3d ----, 2000 WL 424028, *4 (6th Cir. 2000); Jones v. City of Lakeland, 175 F.3d 410, 413 (6th Cir. 1999); Moir v. Greater Cleveland Regional Transit Auth., 895 F.2d 266, 269 (6th Cir. 1990). However, Complainant has simply ignored Governor Sundquist's Motion to Dismiss and my March 29, 2000, Order directing her to respond to it. By refusing to respond to Governor Sundquist's Motion to Dismiss, and further by refusing to comply with my March 29, 2000, Order, Complainant has abdicated her responsibility to prove that this court possesses subject-matter jurisdiction to adjudicate her claim. Consequently, Governor Sundquist's unopposed Motion to Dismiss is GRANTED and the complaint is dismissed for lack of subject-matter jurisdiction. This constitutes a FINAL ORDER dismissing the proceeding, pursuant to 8 U.S.C. § 1324b(g)(3) and 28 C.F.R. § 68.52(d)(5).

B. THE OTHER GROUNDS FOR DISMISSAL SET FORTH IN THE STATE'S MOTION TO DISMISS

Because Complainant has failed to prove that OCAHO possesses subject-matter jurisdiction over her claims, I need not address Governor Sundquist's other challenges to OCAHO's subject-matter jurisdiction. Moreover, I may not address Governor Sundquist's motion to dismiss for failure to state a claim, since to do so would be to assert jurisdiction with respect to that issue. See Bell v. Hood, 327 U.S. 678, 681 (1946).

C. ABANDONMENT

Even if there were subject-matter jurisdiction to adjudicate Complainant's claim, I would nonetheless dismiss the complaint on grounds of abandonment. The OCAHO Rules of Practice provide, in pertinent part, that a complaint may be dismissed upon its abandonment by the party who filed it, and that a party shall be deemed to have abandoned a complaint if he or she fails to respond to orders by the ALJ. See 28 C.F.R. § 68.37(b) (1999). Case law interpreting 28 C.F.R. § 68.37(b) demonstrates that "failure to respond to an order triggers a judgment of default, equivalent to dismissal of the [unresponsive party's] request for hearing...." See United States v. Rodeo Night Club, 5 OCAHO 695, 697 (Ref. No. 812) (1995), 1995 WL 813236, *2 (O.C.A.H.O.). In particular, ALJs have dismissed complaints in section 1324b discrimination cases when complainants have failed to respond or comply with judicial orders, finding that the complainants had abandoned the complaints. See, e.g. Robinson v. New York State Family Court, 5 OCAHO 707, 710 (Ref. No. 814) (1995), 1995 WL 813233, *2 (O.C.A.H.O.); Medina v. Bend-Pack, Inc., 5 OCAHO 569, 571 (Ref. No. 791) (1995), 1995 WL 706030, *2 (O.C.A.H.O.); Palma v. Farley Foods, 5 OCAHO 283, 286 (Ref. No. 757) (1995), 1995 WL 463998, *3 (O.C.A.H.O.). Complainant's noncompliance also could be construed as a failure to prosecute her claim under Federal Rule of Civil Procedure 41(b). See Cascante v. Kayak Club, 1 OCAHO 1491, 1494 (Ref. No. 223) (1990), 1990 WL 512048, *3 (O.C.A.H.O.). OCAHO ALJ's have dismissed complaints with prejudice when complainants have failed to obey judicial orders even when the complainant was acting pro se. See Banuelos v. Transportation Leasing Company, 1 OCAHO 1510, 1510-11 (Ref. No. 227) (1990), 1990 WL 512052, *1 (O.C.A.H.O.); Deguzman v. First American Bank Corp., 3 OCAHO 1889, 1892-93 (Ref. No. 585) (1993), 1993 WL 604452, *3 (O.C.A.H.O.).

In this proceeding, Complainant has repeatedly failed to comply with my Orders. On February 28, 2000, I issued an Order Granting Motions to Dismiss filed by Tennessee State University and the Tennessee Board of Regents. In that Order, I clearly indicated that I had not dismissed the complaint as against seven individually-named respondents, upon whose behalf no motion to dismiss had been filed. At the same time, I noted that Complainant's claims against these seven individuals were so vague that Complainant had arguably failed to state a valid legal claim against any of them. Accordingly, I directed Complainant to file a motion to amend the complaint, to be filed not later than March 20, 2000, setting forth (1) the full name of each individually-named Respondent, (2) the official position held by each individually-named Respondent, both at the time when this cause of action arose and at the present, and (3) Complainant's specific claim against each

individually-named Respondent. Moreover, I expressly warned Complainant that a failure to clarify her claims against the seven individually-named respondents could lead to the dismissal of her complaint, *sua sponte*. Complainant failed to file any motion to amend by the March 20, 2000, deadline, and failed to request an extension of time in which to file. Consequently, on March 29, 2000, I issued a final order dismissing the complaint against the seven individually-named respondents on the ground that Complainant had abandoned her complaint against them.

On March 9, 2000, I issued an Order granting Complainant leave to file a response, not later than March 23, 2000, to Governor Sundquist's Motion to Limit Stay. Complainant failed to file a response to the Governor Sundquist's Motion, and failed to request an extension of time in which to file. Consequently, on March 29, 2000, I entered an Order Granting Governor Sundquist's Motion to Limit Stay.

In addition to granting Governor Sundquist's's Motion to Limit Stay, my March 29, 2000, Order also directed Complainant to respond, not later than April 20, 2000, to Governor Sundquist's Motion to Dismiss, which had been served on Complainant on February 23, 2000. I warned Complainant that her failure to comply with my Order could result in the dismissal of her complaint against Governor Sundquist on grounds of abandonment. Nonetheless, Complainant failed to respond to Governor Sundquist's Motion to Dismiss by the April 20, 2000, deadline. In so doing, she has engaged in behavior covered by 28 C.F.R. § 68.37(b)(1) (1999). Accordingly, I find that Complainant's refusal to respond to my Order of March 29, 2000, justifies the entry of judgment against her, independent of Governor Sundquist's jurisdictional challenge.

V. CONCLUSION

Governor Sundquist's Motion to Dismiss alleges that OCAHO lacks subject-matter jurisdiction over the claim. When the court's subject-matter jurisdiction is challenged in this manner, Complainant bears the burden of proving the existence of jurisdiction. By simply ignoring Governor Sundquist's Motion, Complainant has failed to satisfy her burden of proof with respect to OCAHO's subject-matter jurisdiction. Consequently, the complaint is dismissed for lack of subject-matter jurisdiction. Moreover, even if OCAHO possessed subject-matter jurisdiction, the complaint would be dismissed on grounds of abandonment, pursuant to 28 C.F.R. § 68.37(b)(1) (1999).

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

NOTICE CONCERNING APPEAL

This is a final order with respect to Complainant's Complaint against Respondent Governor Don Sundquist. As provided by 8 U.S.C. § 1324b(i) and 28 C.F.R. § 68.57, not later than sixty (60) days after entry of a final order, a person aggrieved by such order may seek a review of the order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.